

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FARAD CONTINUATION SHEET
SECOND APPEAL NO.646 OF 2004

.....
Office Notes, Office
memorandum of Coram,
appearances, Court's
orders or directions
& Registrar's orders.

Court's or
Judge's orders

.....
Mr.G.S.Godbole for the Appellants

CORAM: A.S.OKA, J.
DATED: AUGUST 2, 2006.

P.C.:

1. Heard Shri Godbole for the Appellants. The Appellants are the original Plaintiffs. A suit filed by the Appellants for removal of encroachment has been dismissed by the Trial Court and the decree of the Trial Court has been confirmed in Appeal. He submitted that the Appellate Court ought to have remanded the matter to the Trial Court by directing the Trial Court to appoint another Court Commissioner.

2. I have considered the submissions. The courts below have considered the survey map prepared by the Surveyor Shri Dattatray Gopal Kulkarni. The Appellate

Court found that the area of the property allegedly owned by the Appellants as shown in the survey map produced by Shri Kulkarni was not consistent with the area shown in the revenue record. The difference in the area is 24 R. Considering the oral and documentary evidence on record the Courts below held that the Appellants have failed to establish that the alleged encroached portion was a part and parcel of Block No.1812.

3. The Advocate for the Appellants has relied upon the map at Exh.97 which was prepared by Shri Kulkarni. The Appellants have not challenged the order of the Trial Court of appointing another court Commissioner. Hence, no fault can be found with the Appellate Court not acceding to the request for remand of the matter. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.